CHAPTER III
AUDIT OF TRANSACTIONS

Audit of transactions of the Government, its field formations as well as of autonomous bodies, brought out several instances of lapses in management of resources and failures in adherence to the norms of regularity, propriety and economy. These have been presented in the succeeding paragraphs.

3.1 Non-compliance with the rules

For sound financial administration and financial control, it is essential that expenditure conforms to financial rules, regulations and orders issued by the competent authority. This not only prevents irregularities, misappropriation and frauds, but helps in maintaining good financial discipline. Some of the audit findings on non-compliance with rules and regulations are as under:

HIGHER EDUCATION DEPARTMENT

3.1.1 Non-compliance with provisions of the Income Tax Act, 1961 by Sree Sankaracharya University of Sanskrit

Failure to comply with the provisions of the Income Tax Act, 1961 by the Sree Sankaracharya University of Sanskrit led to loss of interest amounting to ₹ 92.15 lakh accrued on its deposits.

According to Section 10 (23 C) (iii ab) of the Income Tax Act, 1961, the income of educational institutions, existing solely for educational purposes and not for purposes of profit and which are wholly or substantially financed by the Government, are exempted from income tax. Further, according to Section 197(1) of the Income Tax Act, when no deduction of income tax is to be made on the total income of an assessee, the concerned assessing officer shall, on application made by the assessee, give a certificate to that effect. The Act also provides that claim for refund of tax deducted at source shall not be allowed, unless it is made within a period of one year from the last day of such assessment year.

Deductions made towards the Provident Fund and Pension Fund of employees of Sree Sankaracharya University and also Development Funds of the university were kept in fixed deposits in Sub-Treasury, Ankamali, Ernakulam. Audit scrutiny (February 2011) of these deposits revealed that the Sub-Treasury deducted tax (from February 2006 onwards) on the interest accrued on these deposits. The amount deducted for the period upto 2009-10 (taxes deducted at source for the period from 2001-02 to 2009-10) was ₹ 1.05 crore. The university neither obtained a certificate from the assessing officer for exempting them from tax deduction nor claimed refund of the tax deducted at source till March 2011. It was evident from the provisions of the Income Tax Act that the University was not entitled to get refund of the tax deducted amounting to ₹ 92.15 lakh for the period 2001-02 to 2008-09.

The university stated (September 2011) that they had taken up the matter with the Income Tax authorities for refund of tax deducted. The reply is not acceptable as the existing provisions of the Income Tax Act do not permit

refund after one year from the last date of the assessment year. Thus, the university authorities failed to obtain the required certificate from the Income Tax Department for claiming exemption from tax deduction, which led to a loss of ₹ 92.15 lakh, being the interest earned on their deposits.

The matter was referred to the Government in July 2011. Their reply had not been received (October 2011).

INFORMATION TECHNOLOGY/HEALTH AND FAMILY WELFARE DEPARTMENT

3.1.2 Short collection of cost of tender forms

Non-compliance with provisions of the Stores Purchase Manual resulted in short collection of the cost of tender forms amounting to ₹ 63.24 lakh in Infopark and the Malabar Cancer Centre.

Government orders (November 2004) stipulate that all autonomous bodies, including co-operative institutions and universities should follow the provisions of the Stores Purchase Manual (SPM) while tendering works/making purchases. According to the latest provisions in Paragraph 21 (a) of SPM (effective from December 2008), the cost of tender forms to be collected from bidders was as follows:-

Table 3.1: Details of cost of tender forms to be collected from bidders

Estimated cost of tender	Cost of tender forms
Up to ₹ 50,000	₹ 300+VAT
Above ₹ 50,000 up to ₹ 10 lakh	0.2% of the cost of tender rounded to the nearest multiple of 100, subject to a minimum of ₹ 400 and maximum of ₹ 1,500 + VAT
Above ₹ 10 lakh	0.15% of the cost of tender rounded to the nearest multiple of 100 subject to a maximum of ₹ 25,000 + VAT

Audit scrutiny of two State autonomous bodies viz., Infopark and Malabar Cancer Centre (MCC) revealed that these autonomous bodies were not following the provisions of the SPM regarding the cost of tender forms. Failure to collect the cost of tender forms as per the rate prescribed in the SPM resulted in short collection of receipts of ₹ 63.24 lakh[30] during the period from February 2009 to March 2011.

In response to Audit's remarks, the Chief Executive Officer of Infopark replied (June 2011) that the cost of tender forms to be collected was generally fixed by them at 0.05 *per cent* of the probable amount of the contract and the MCC replied (September 2010) that the error in short collection was not intentional. The replies cannot be accepted because it was the primary responsibility of all the State autonomous bodies to follow the provisions of the SPM as well as the orders issued by the Government from time to time, as these institutions were substantially financed by the State Government. The Government replied (October 2011) that Infopark had been directed to levy revised rates fixed for tender forms.

[30] Infopark : ₹ 52.81 lakh and MCC : ₹ 10.43 lakh

PUBLIC WORKS DEPARTMENT

3.1.3 Excess payment due to non-recovery of overhead charges and contractor's profit

Excess payment of ₹ 77.46 lakh was made to contractors due to non-recovery of overhead charges and contractor's profit on the cost of bitumen in seven works.

Government issued (September 2003) orders to dispense with the departmental supply of bitumen for works costing more than ₹ six lakh, which was modified (February 2004) to ₹ 15 lakh. For such works, the actual cost of bitumen was to be reimbursed to the contractors. As such, the elements of 10 *per cent* contractor's profit and 10 *per cent* overhead charges were not admissible while computing the rates of bituminous works.

Audit scrutiny revealed that the Executive Engineers of two Public Works Roads Divisions and two National Highway Divisions had wrongly included the elements of 10 *per cent* contractor's profit and 10 *per cent* overhead charges on the cost of bitumen in the estimated rates of seven bituminous works and omitted to recover the same at the time of payment to the contractors, leading to excess payment of ₹ 77.46 lakh as shown below:-

Table 3.2: Details of excess amount paid

Sl. No.	Name of Division	Name of work	Excess amount paid (₹ in lakh)
1.	Roads Division, Muvattupuzha	Improvements to Kothamangalam-Pothanicadu-Paingottur-Njarakkad Road 0/00 to 20/250	20.99[31]
2.	-do-	Improvements to Mannoor-Ponjassery Road	17.35[32]
3.	Roads Division, Thrissur	Improvement to Thrissur City Roads	8.69[31]
4.	NH Division, Muvattupuzha	IRQP NH 49-274/000 to 286/610	10.56[32]
5.	-do-	IRQP NH 220-136/700 to 146/975	12.09[32]
6.	NH Division, Kodungallur	IRQP-Palarivattom-Kakkanad-Kumarapuram Road	3.63[32]
7.	-do-	IRQP-Kalamassery-Pathalam-Eloor-Manjummal-Muttom Road and link road from Kalamassery (NH Junction) to Seaport Airport Road	4.15[32]
Total			**77.46**

Source: Departmental records

Thus the inclusion of the elements of overhead charges and contractor's profit in the estimate and the non-recovery of the same at the time of payment to the contractors resulted in irregular excess payment of ₹ 77.46 lakh.

The matter was referred to the Government in July 2011. Their reply had not been received (October 2011).

[31] Ten *per cent* overhead charges
[32] Ten *per cent* overhead charges and 10 *per cent* contractor's profit

3.2 Audit against propriety/Expenditure without justification

Authorisation of expenditure from public funds is to be guided by the principles of propriety and efficiency of public expenditure. Authorities empowered to incur expenditure are expected to enforce the same vigilance as a person of ordinary prudence would exercise in respect of his own money and should enforce financial order and strict economy at every step. Audit has detected instances of impropriety and extra expenditure, some of which are mentioned hereunder.

INDUSTRIES DEPARTMENT

3.2.1 Release of funds without taking possession of land for setting up a Common Effluent Treatment Plant

Release of ₹ 2.56 crore to a Special Purpose Vehicle for setting up a Common Effluent Treatment Plant even before taking possession of land for the purpose resulted in blocking of Government money outside the Government account for over two years and non-achievement of the objective of reducing pollution.

The Director of Industries and Commerce (Director) convened (June 2007) a meeting with the representatives of industries located in the Edayar Industrial Development Area for addressing the problem of pollution of the Periyar river. In the meeting, it was decided to set up a Common Effluent Treatment Plant (CETP). The Director had already identified (June 2007) two[33] plots of land and requested the Government to allot any of these plots for setting up the CETP in the industrial area. The representatives of the industries formed and incorporated (June 2008) a Special Purpose Vehicle (SPV) as a private limited company named "Edayar Effluent Treatment Plant Private Limited" (EETPPL). The Detailed Project Report (DPR) prepared (March 2008) by the consultants[34] stipulated requirement of 7,000 sq m[35] of land and the project cost was estimated at ₹ 2.56 crore. As per the DPR, funding of the project was to be done in the following manner:

Table 3.3: Details of funding of the project

Name of the party	Percentage of contribution	Amount (₹ in crore)
Central Government share	20	0.51
State Government share	20	0.51
Soft loan from SIDBI	40	1.02
Participating industries	20	0.52
Total	**100**	**2.56**

Source: Detailed Project Report

The Government accorded (February 2009) administrative sanction to set up the CETP at the estimated cost of ₹ 2.56 crore and released the entire project cost to the SPV in March 2009.

[33] Five acres of land with Kerala State Electricity Board and 4.75 acres of land with Indian Rare Earths Limited, Aluva.
[34] M/s Envirochem Laboratories Private Limited, Thrissur
[35] Equivalent to 1.73 acres

The following audit observations are made with regard to execution of the project:

- As per the DPR, the share of contribution to the SPV from the Central and State Governments was ₹ 1.02 crore. The balance amount of ₹ 1.54 crore was to be contributed by the participating industries. As such, there was excess release of ₹ 1.54 crore by the Government. The State Government should have prescribed that the initial funding would be done by the participating industries and raising of the soft loan would be followed by Government funding. This would have ensured their commitment to the project. Without any contribution to the SPV from the beneficiaries, the full release of the Government share in advance was inappropriate.
- Smooth execution of the CETP was critically dependent on the availability of land. The department had identified the land for setting up the CETP in June 2007. At a belated stage (April 2011), a joint visit to the identified lands was made. Thereafter, the recommendation of the team was forwarded to the Government for a final decision in May 2011. There was no progress in the acquisition of land till date (October 2011). As a result, the amount of ₹ 2.56 crore remained blocked outside the Government account since its release in March 2009. Without taking advance possession of the required land, release of funds to the SPV was inappropriate.

The Director replied (June 2011) that the department had identified surplus land available with M/s Indian Rare Earths Limited and the Kerala State Electricity Board in 2007 itself. Expecting completion of formalities for the resumption of land by the department, the amount was drawn and released to the SPV in the year 2009 itself. Further, there were sufficient savings in the budget for this project in the financial year 2008-09 and hence, the funds were sanctioned. However, the construction of CETP was not started (June 2011) due to non-availability of land.

The reply is not acceptable as funds should have been released only after possession of land had been taken. The Director had issued orders (February 2009) releasing the amount to the SPV, which stipulated that an agreement with the SPV should be executed. This was not complied with. Further, the contribution to CETP should have been restricted to the Government's share of ₹ 1.02 crore, subject to prior contribution of their full share by the participating industries.

Thus, release of ₹ 2.56 crore to a Special Purpose Vehicle for setting up a CETP even before taking possession of land for the purpose resulted in blocking of Government money outside the Government account for over two years and non-achievement of the objective of reducing pollution.

The matter was referred to the Government in May 2011. Their reply had not been received (October 2011).

3.2.2 Undue favour to an Industrial Co-operative Society

Undue favour was extended to an Industrial Co-operative Society by granting financial assistance initially in the form of a loan and subsequently converting the loan as share capital participation, in gross violation of rules and instructions.

As per the provisions of the Kerala Financial Code (KFC), before considering a loan application, the sanctioning authority should obtain from the applicant *inter alia*, details of sources of income and of how the borrower proposed to repay the loan within the stipulated period. Details of security proposed to be offered for the loan together with valuation of security by an independent authority were also to be obtained. The Government issued (January 2007) a circular specifying the rate of interest and terms and conditions of loans to different institutions. According to the circular, interest at 14.5 *per cent* per annum was chargeable on loans advanced to co-operative societies. The circular also stipulated that the terms and conditions of the loans were to be fixed, loan sanctioning authorities were to closely monitor repayment of loans and recovery of interest and that repayment of the loans were to commence from the date of completion of one year from the date of drawal of the loans.

M/s Pinarayi Industrial Co-operative Society Limited submitted (December 2007) an application for financial assistance for ensuring uninterrupted functioning and diversification of its activities. The society sought (May 2008) ₹ 5.58 crore as grant from the Government. The Government issued (February 2009) an administrative sanction for releasing ₹ two crore[36] as loan for modernizing the society and the Director of Industries and Commerce released (March 2009) the amount to them for the purpose. Audit scrutiny revealed the following lapses in release of the loan to the society:

- The Government sanctioned the loan under the head of account "Loans to existing weaker co-operative institutions having growth potential". There was failure to assess the eligibility of the society before release of the amount. As per the assessment carried out (March 2010) by the General Manager, District Industries Centre, Kannur, the society could not be considered as weak society as it was making profit for the last seven years. Hence, release of the loan to the society was improper.
- The repayment of the loan did not commence from the date of completion of one year from the drawal of the loan. As of March 2011, Audit noticed that the repayment was still to begin.
- The repayment of any loan is critically dependent on the capacity of the borrower to repay the loan and the return on the investment made with the funds borrowed. The society had indicated (January 2009) to the Government that it would be difficult for them to repay the loan and the interest, if the financial assistance was given in the form of loan. This clearly indicated that the society did not have the capacity to repay the loan. As such, release of loan of ₹ two crore to the society was improper.

[36] Modernisation of Yard (₹35.08 lakh); Procurement of additional equipment (₹26.63 lakh), TAR plant (₹47.78 lakh), Land (₹50 lakh), Civil works (₹16.40 lakh) and Working capital (₹ 23.79 lakh)

Rules relating to the Government's share participation in the Industrial Co-operative Societies stipulated a maximum limit of ₹ 2.5 lakh[37]. When the lapses in the payment of the loan assistance to the Society were pointed out by Audit (March 2011), the Government converted (May 2011) the loan amount of ₹ two crore as share capital participation with effect from the date on which the amount was disbursed to the society. This action was again, violative of the rules governing financial assistance by way of Government share participation. Thus undue favour was extended to the society.

The matter was referred to the Government in May 2011. Their reply had not been received (October 2011).

INFORMATION AND PUBLIC RELATIONS DEPARTMENT

3.2.3 Violation of rules, norms, etc., in releasing advertisements

An expenditure of ₹ 28.66 crore was incurred by the Information and Public Relations Department during 2010-11 on display advertisements, violating the canons of financial propriety, rules of empanelment and norms for release of advertisements.

A scrutiny of expenditure incurred by the Information and Public Relations Department for the release of advertisements to the media on behalf of various departments during 2008-09 to 2010-11 was undertaken in audit for assessing the expenditure from the propriety angle. Audit used the canons of financial propriety as a criterion, which required that public money should not be utilised for the benefit of a particular person or section of the community. The conclusion about compliance with this requirement could be arrived at only by looking at the contents of the advertisement. If the advertisement related to publication of tender notices, statutory notifications etc., then the expenditure on these would be in conformity with this requirement. If the advertisement was in the nature of extolling the achievements of the Government, it would basically be a direct or surrogate advertisement for the political party in power which would be violative of the canons of financial propriety. Adopting this methodology, Audit found that expenditure of ₹ 28.66 crore on advertisements during 2010-11 was objectionable. The following lapses were noticed:

3.2.3.1 Propriety requirement

- An amount of ₹ 4.94 crore[38] was incurred to highlight the fourth anniversary of the Government. Display advertisements were given (May 2010) in all editions of 64 dailies empanelled in the media list for 2009-10 and electronic media.
- Similarly, ₹ 9.43 crore was incurred in connection with publishing 151 display advertisements during January-March 2011, prior to the General Elections to the Assembly held in April 2011, relating to the achievements of the Government.

[37] ₹ 3.5 lakh for Women's Industrial Co-operative Societies

[38] Advertisements were released for 'Display Advertisements' but expenditure was met from another head 2220-60-106-99 - 'Field Publicity'.

- There was a massive jump in advertisement expenditure for 'Display Advertisements' during 2010-11, consequent on issue of advertisements mainly highlighting the achievements of the Government, from ₹ 5.80 crore in 2008-09 to ₹ 9.83 crore in 2009-10 and to ₹ 28.66[39] crore in 2010-11.

- According to provisions in the Kerala Budget Manual, advances from the Contingency Fund could be obtained only for meeting unforeseen expenditure or on a 'New Service.' It was seen that the initial budget provision for Display Advertisements in 2010-11 was ₹ 2.15 crore. In order to meet the additional expenditure, an advance of ₹ 12 crore was obtained from the Contingency Fund in March 2011. This did not meet the criteria for drawal under the Contingency Fund.

- The department sanctioned (February 2011) the printing of 3.5 lakh copies of the monthly newsletter 'Vikasana Samanuayam' to a private press and payment of ₹ 14.40 lakh was made in March 2011. Audit noticed that the department had not received and accounted for the newsletter in its Stock Registers as required in the Store Purchase Manual. The department admitted (June 2011) that copies of the printed newsletters had not been received in the office and stated that they were given to some private/political organisation. In the absence of receipt and issue of stock entries, Audit could not satisfy the genuineness of the printing cost of ₹ 14.40 lakh.

3.2.3.2 Empanelment of Newspapers

According to a Government order (July 1999), advertisements were to be released only to newspapers with a minimum circulation of 3,000 copies per edition having uninterrupted and regular publication for a period of 12 months. The following deficiencies were observed:

- The rate of advertisement charges payable to the dailies is applicable from 1 April of the calendar year to 31 March of the succeeding year. Transparency demanded that the eligibility criteria were also met from 1 April. During 2008-09 to 2010-11, media lists were prepared and published only in December and January of the relevant financial year. The delay in preparation of the list was used as a mechanism to favour the dailies which did not meet the requirement of the criterion as on 1 April.

- Advertisements worth ₹ 19.55[40] lakh were released in 2010-11 to three newspapers not empanelled in the media list.

- Audit noticed that the media list[41] for 2010-11, issued in January 2011 had two copies, Copy 1 and Copy 2. In Copy 2, a daily was newly

[39] The expenditure of ₹ 28.66 crore includes payment of ₹ 7.23 crore made in 2010-11 and committed liability of ₹ 21.43 crore.

[40] New Indian Express- ₹ 0.20 lakh; Theepantham – ₹ 2.73 lakh; Thejas – ₹ 16.62 lakh.

[41] As per Government order (July 1999) dailies with one year of uninterrupted circulation and 3,000 copies per edition are eligible to be included in the media list to receive advertisements from the Government.

inserted as Sl.No. 35. The total number of dailies in Copy 2 would have gone up to 74 with this insertion. However, to avoid detection of the insertion, Sl. No. 56 was shown twice and the total number was retained as 73, as in Copy 1.

Moreover, in Copy 1, 'All editions' of the daily 'Metrovartha' was mentioned, whereas in Copy 2, only 'Kochi edition' was listed. However, the rate shown in Copy 2 was the same as the rate of 'All editions' as in Copy 1.

On observing the discrepancies in the two copies, Audit sought the files and other connected records of the media list for 2010-11. However, the department did not produce the relevant files for scrutiny as required by Audit. In the absence of proper records, Audit could not assess the fairness in empanelment of dailies included in the media list.

- Though the daily 'Thejas' was not in the media list in 2009-10 and 2010-11, the department released advertisements worth ₹ 48.79 lakh to the daily in 2009-10 and 2010-11. Incidentally it was also observed that the Ministry of Home Affairs, Government of India, had raised (November 2009) doubts regarding the propagandist nature of the newspaper.

3.2.3.3 Issue of advertisements on rotation basis

Some States like Andhra Pradesh follow the procedure of rotation in releasing advertisements. This procedure has the following advantages:

- It minimises the cost of advertisements to a considerable extent.
- It tests the ability of a newspaper to run on its own without frequent support from the Government through advertisements which could have implications on objective reporting.

Currently, the State Government does not follow rotation procedure in release of advertisements.

The Government stated (August 2011) that as no violation of rules in release of advertisements was pointed out in Audit, the expenditure could not be considered as improper. The Government also stated that advertisements intended to give publicity to various welfare measures and projects implemented by an elected Government could not be avoided on the grounds of financial propriety. The reply does not explain how the advertisements are in conformity with the canons of financial propriety. The advertisements were not in the nature of giving publicity to the potential beneficiaries as to how to avail benefits under the welfare schemes. Instead, the advertisements were in the nature of highlighting the achievements of the Government.

Regarding the release of advertisements to the daily 'Thejas', the Government stated that though the daily was not included in the media list for 2009-10 an agreement was executed with the daily on 6 January 2010 and hence the department was bound to release advertisements. The reply is not acceptable as the media list for 2009-10 was issued in December 2009 and hence execution of agreement with the daily after the issue of media list itself was irregular.

PUBLIC WORKS DEPARTMENT

3.2.4 Payment beyond the scope of contract

Payment of ₹ 59.42 lakh was made to a contractor beyond the scope of the contract.

The Superintending Engineer (SE), Roads and Bridges, North Circle, Kozhikode awarded (December 2005) the work of construction of 'the Olassery-Palayangad Road, including a bridge across Chitturpuzha at Palayangad' in Palakkad district to a contractor for a contract amount of ₹ 3.60 crore which was 24.60 *per cent* over the estimate[42]. The SE had executed five supplemental agreements with the contractor for carrying out extra items of work valued at ₹ 2.25 crore related to the main work and extension of time was also granted up to 31 March 2008. The contractor completed the work on 28 May 2008 and final payment was made in October 2009. However, the contractor represented (August 2009) to the Minister (Public Works Department) for enhanced of rates for cement and steel. The Minister forwarded the representation (August 2009) to the Chief Engineer (CE) for his recommendations. The CE recommended the proposal (August 2009) to the Government for paying enhanced rates of cement and steel. The Government turned down (September 2009) the proposal on the plea of non-applicability of the stipulations of Government Circular of 10 October 2008 issued by the Finance Department to the above work. In accordance with para 2.5 of the circular, enhancement needed to be paid only for items executed after 1 April 2008 in respect of works for which extension of time of completion had been legally sanctioned and for works for which the time of completion had not expired. In the instant case, the actual purchase of materials was before 1 April 2008. However, the Government directed that payment may be made for the extra items executed by the contractor based on the prevailing Schedule of Rates (SOR)/market rates as per the rules. According to the original agreement, the payment for the extra items had to be made as per the original schedule of rates (2004 SOR) at which the work was tendered plus the tender excess (24.6 *per cent*). The contractor's bill was finally settled (as per 2004 SOR plus tender excess percentage) on the basis of the original agreement. As such, the contractor was not eligible for any further payment as per the direction of the Government. However, the Executive Engineer (EE), Roads Division, Palakkad paid ₹ 59.42 lakh in January 2010 to the contractor towards the difference in cost between the SOR of 2004 and the SOR of 2007 for works executed as extra items.

When this irregular payment was pointed out (February 2011) by Audit, the Government issued (March 2011) orders regularising the excess expenditure on the ground that there was considerable delay in completion of the work due to the delay in providing hindrance free land. The contention of the Government was not correct. The contractor had already been given benefit by way of supplemental agreements worth ₹ 2.25 crore as against the initial agreed value of ₹ 3.60 crore. The extra payment was in violation of contractual provisions.

[42] Based on 2004 Schedule of Rates

The matter was referred to the Government in June 2011. Their reply had not been received (October 2011).

3.2.5 Excess payment to a contractor due to incorrect application of unit rate

Erroneous calculation of rebate at the time of payment on a road work under the Central Road Fund Scheme resulted in excess payment of ₹ 65.03 lakh to a contractor

The Superintending Engineer (SE), National Highways South Circle, Thiruvananthapuram awarded (August 2008) an item of work 'widening and improvement of riding quality of a major district road'[43] in Thiruvananthapuram District under the Central Road Fund Scheme for an amount of ₹ 10.74 crore to a contractor. The contractor was paid (September 2009) ₹ 11.65 crore on completion of the work.

The successful bidder committed an error in recording the unit rate for 'providing and laying of bituminous macadam (BM)', an item of work in the Bill of Quantities (BoQ). Instead of the actual rate of ₹ 3,122.355/m^3 for the above item of work, ₹ 7,500/ m^3 was indicated in the BoQ. However, the total amount quoted for the estimated quantity of 6,853m^3 for the above item was shown correctly as ₹ 2.14 crore reckoned at the actual rate of ₹ 3,122.355/m^3. The grand total of his offer of ₹ 10.74 crore was also arrived at by taking the amount for the above item as ₹ 2.14 crore. The contractor pointed out the error in writing at the time of opening of the financial bid. However, the SE, instead of accepting the correct rate intimated by the contractor, executed the agreement by assuming the erroneous unit rate of ₹ 7,500/m^3 and arrived at the item total for 6,853 m^3 of BM and the grand total of the bid as ₹ 5.14 crore instead of ₹ 2.14 crore and ₹ 13.74 crore instead of ₹ 10.74 crore respectively. The excess of ₹ three crore[44] on account of the above modification was depicted as rebate and finally the total of his offer was arrived at ₹ 10.74 crore. The procedure followed by the SE was incorrect as the contract provided for a much higher unit rate of ₹ 7,500/m^3 of BM instead of ₹ 3,122.355/m^3 and further it resulted in a complicated solution to a simple issue. It was seen that on actual execution, the quantity of 6,853 m^3 for the item 'providing and laying of BM' increased to 8,926.17 m^3. A supplemental agreement was executed for the revised quantity without effecting the correction in the rate intimated by the contractor. When the payment was made, the department deducted only ₹ 3.26 crore[45] as rebate by calculating the rebate on the total payment of ₹ 14.91 crore on a proportionate basis.

[43] Neyyattinkara – Aruvipuram – Kattakkada – Neyyar Dam Road

[44] {(7500 – 3122.36) x 6853 m^3}

[45] Total contract amount as worked out by the SE : ₹ 13.74 crore
Rebate allowed by the SE : ₹ 3.00 crore
Final amount payable as per supplemental agreement : ₹ 14.91 crore
Rebate deducted : $14.91 \times \frac{3.00}{13.74}$ = ₹ 3.26 crore

However, the actual amount to be deducted worked out to ₹ 3.91 crore[46]. This resulted in excess payment of ₹ 65.03 lakh to the contractor.

Failure of the SE to adopt the correct rate for 'providing and laying of BM' in the contract agreement and adoption of a convoluted mechanism to rectify the error, facilitated the excess payment to the contractor.

The matter was referred to the Government in June 2011. Their reply had not been received (October 2011).

WATER RESOURCES DEPARTMENT

3.2.6 Irregular refund of works contract tax

The Kerala Water Authority allowed irregular refund of works contract tax amounting to ₹ 50.95 lakh to a contractor in violation of statutory provisions.

The Kerala Water Authority (KWA) awarded (March 2003) the work of 'Water Supply Augmentation to Parur Municipality' to the Kerala State Construction Corporation Limited (KSCC), a Government of Kerala undertaking. The work was executed by KSCC through a consortium of three[47] contractors including M/s Noble Tech Engineering (P) Limited, Palarivattom, Kochi.

As per the notice inviting tenders (NIT) the rate of work contract tax (WCT) under the Kerala General Sales Tax (KGST) Act, 1963, was indicated as two *per cent* in respect of civil contracts and five *per cent* in respect of other contracts. It was also mentioned therein that tax would be deducted as per the rate applicable from time to time. Further, Section 7 (7C) of the KGST Act, stipulated that every awarder was required to obtain from the contractor at the time of every payment, a quarterly certificate issued by the Department of Commercial Taxes (assessing authority) showing the tax liability in relation to the works contract. Accordingly, the KSCC produced a certificate to KWA issued by the Department of Commercial Taxes in December 2003, specifying the rate of tax at 9.66 *per cent* in respect of M/s. Noble Tech Engineering (P) Limited (contractor).

As per the certificate, the KWA recovered WCT at the rate of 9.66 *per cent* from the bills of the contractor. In April 2005, the KSCC represented to the KWA that an amount of ₹ 1.35 crore had been recovered in excess towards WCT if the rate of two *per cent* mentioned in the agreement was adopted. Consequently, the Chief Engineer (CE), Central Region, Kochi decided (August 2005) to revise the WCT to the rate of 2.3[48] *per cent* and passed an order to refund the difference between 9.66 *per cent* and 2.3 *per cent*. This order was subsequently revised and it was decided to refund ₹ 50.95 lakh (difference between 5.75[49] *per cent* and 2.3 *per cent*) to the contractor, who

[46] ₹ 4377.64 (Difference between ₹ 7500/m^3 and the actual rate of ₹ 3122.36/m^3) x 8926.17m^3 (quantity executed): ₹ 39075559 = ₹ 3.91 crore

[47] M/s Noble Tech Engineering (P) Limited, M/s S&S Private Limited and Shri Pathrose George Karamen

[48] Two *per cent* Sales Tax + 15 *per cent* additional Sales Tax

[49] Five *per cent* Sales Tax + 15 *per cent* additional Sales Tax

was directed to claim the difference between WCT of 9.66 *per cent* and 5.75 *per cent* directly from the Department of Commercial Taxes.

The Department of Commercial Taxes stated (November 2005) that the orders issued by the CE were against the statutory obligation as envisaged in Section 10 of KVAT Act, 2003. It stated that it was up to the contractor to approach the Department of Commercial Taxes for getting refund of excess payment or for future adjustment as per rules which could only be considered on completion of the assessment for the respective year. This advice was ignored and KWA refunded (June 2007) ₹ 50.95 lakh to the contractor.

Thus the refund of ₹ 50.95 lakh given from the KWA funds to the contractor was irregular and beyond the powers of KWA. The Government stated (July 2009) that KWA had passed (May 2009) orders to recover the amount irregularly refunded to the contractor. The amount had, however, not been recovered (June 2011).

The matter was referred to the Government in July 2011. Their reply had not been received (October 2011).

3.2.7 Extra expenditure due to abnormal delay in finalization of tenders

Due to abnormal delay in finalization of tenders, the department could not consider the lower rates offered by some bidders, resulting in avoidable extra expenditure of ₹ 4.57 crore in four canal works of the Idamalayar Irrigation Project.

According to Para 15.7.13 of the Kerala Public Works Department Manual, consideration of tenders and decisions thereon should be completed well before the date of expiry of the firm period noted in the tenders. It is further stipulated that if delays are anticipated, the officer dealing with the tenders should instruct the official who opens the tenders to get the consent of the lowest three tenderers for extending the firm period by one month or more as required. In case the lowest or any tenderer refuses to extend the firm period, their tender cannot be considered.

The Superintending Engineer (SE), Project Circle, Piravom invited (28 December 2006) pre-qualification tenders for four canal works of the Idamalayar irrigation project, fixing the last date of receipt of tenders as 27 February 2007, which was subsequently extended to 14 March 2007. The firm period for all the pre-qualification tenders was four months (i.e., up to 13 July 2007). After evaluation, the SE forwarded the tender documents to the Chief Engineer (CE), Project II on 28 March 2007. The pre-qualification committee meeting of CEs was held only on 2 July 2007 due to delay in verification of the authenticity of the experience certificates of the bidders by the CE's office. The pre-qualification committee approved a list of 30 bidders in the meeting and the CE communicated the same to the SE only on 10 July 2007 which was received by the SE on 13 July 2007, the date of expiry of the firm period. Though the SE requested the bidders to extend the firm period for a further period of two months, only 15 out of 30 qualified bidders extended the firm period. The price bids of 15 bidders who were willing to extend the firm period were opened on 18 July 2007 and agreements were executed with the

lowest bidders at 45 *per cent* above the estimated rates after obtaining orders of the Government. However, it was noticed in audit that among the offers of bidders who had not extended the firm period, there were bids offering lower rates ranging from 12 *per cent* below the estimated rates to 17 *per cent* above the estimated rates. As these bidders were not willing to extend the firm period, their lower offers could not be considered by the department. Thus, due to the failure to finalise the selection of pre-qualified bidders within the firm period, the department could not consider the bids at lower rates as the firm period of these bidders had expired. Consequently, the selection had to be made from the other bidders who had quoted higher rates, which resulted in avoidable extra expenditure of ₹ 4.57 crore in the four canal works as shown below:-

Table 3.4: Details of extra expenditure

Sl. No.	Name of work	Net work amount excluding items for which tender excess is not allowed (₹ in lakh)	Net difference in tender excess (in percentage)	Excess paid (₹ in lakh)
1.	Constructing aqueduct from Chainage 22914m to 23074m	136.25	28	38.15
2.	Constructing aqueduct from Chainage 23398m to 23676m	260.92	57	148.72
3.	Constructing aqueduct from Chainage 24102m to 24442m	386.23	36	139.04
4.	Constructing aqueduct from Chainage 30200m to 30510m	327.21	40.1	131.21
Total excess				**457.12**

Source: Financial offers of the bidders and running account bills

On this being pointed out, the Government replied (January 2010) that bidders quoting lower rates were likely to have been disqualified while evaluation of the pre-qualified tenders by the SE. Eighteen out of 48 bidders were disqualified. The Government also stated that there was a procedural delay due to the absence of any order fixing time limits for different authorities for processing of tenders. The reply is not acceptable as only bids of qualified bidders had been reckoned by Audit for computing the extra expenditure. Further, the Government should have fixed time limits for the different authorities much earlier and ensured strict compliance. Incidentally, the time limits had not been fixed so far (June 2011).

Based on the audit observation, an enquiry was conducted by a team consisting of officials[50] of the Water Resources Department. The Government further stated (May 2011) that as a follow-up of the enquiry report, the Chief Engineers had been asked to furnish proposals for issue of clear cut guidelines for finalization of the pre-qualification process.

The matter was referred to the Government in June 2011. Their reply had not been received (October 2011).

3.3 Persistent and pervasive irregularities

An irregularity is considered persistent if it occurs year after year. It becomes pervasive when it is prevailing in the entire system. Recurrence of

[50] Joint Secretary, Under Secretary and Section Officer

irregularities, despite being pointed out in earlier audits, is not only indicative of non-seriousness on the part of the Executive but is also an indication of lack of effective monitoring. This, in turn, encourages wilful deviations from observance of rules/regulations and results in weakening of the administrative structure. A case of persistent irregularity detected by Audit is discussed below:

HIGHER EDUCATION DEPARTMENT

3.3.1 Excess payment of House Rent Allowance

Calicut University, Kannur University and Mahatma Gandhi University paid excess house rent allowance to their employees to the extent of ₹ 2.70 crore up to 2009-10.

In March 2006, the State Government revised scales of pay and allowances of Government employees/teachers of the State with effect from 1 July 2004. The Government (June 2006) extended the benefit to all the employees of universities (except Agricultural University) of the State. House rent allowance (HRA) paid to the employees of the Calicut University, Kannur University and Mahatma Gandhi University was examined in Audit between January 2010 and March 2011. As the headquarters of all the above universities were situated in unclassified places[51], the rate of HRA admissible per month was ₹ 150. Audit observed that against the admissible rate of ₹ 150, the employees working in the headquarters of the universities were paid HRA ranging from ₹ 250 - ₹ 1200, which was applicable to those employees working in B class cities.

The issue was first pointed out by Audit between July 2007 and January 2008 but no action was taken and the universities continued to pay HRA at the higher rates. Following this, the Government issued (January 2008) orders directing the universities to pay HRA strictly as per Government rules and to recover HRA, if any, paid in excess. Accordingly, Kannur University started paying HRA at the admissible rates (₹ 150 per month) from March 2008. Kannur University also stated (June 2011) that it had requested the Government to extend the benefit of HRA at municipal rates to its employees on the ground that the university headquarters was situated on the border of municipal limits. The recovery of excess HRA paid was kept in abeyance pending Government's response. Calicut University replied (May 2011) that the University had stopped payment of HRA at higher rates with effect from April 2011. A decision on the recovery of excess HRA paid would be taken on receipt of reply from the Government to their representation (December 2010) in this regard. Mahatma Gandhi University continued to pay HRA at inadmissible rates.

The replies of the universities in respect of non-recovery of excess payments are not acceptable since Government had already stated (January 2008) that it would not permit one set of rules for the State Government employees and another for the universities and directed the universities to recover the excess

[51] Not classified under cities, municipalities where higher rate of HRA is admissible

payment. The irregular HRA paid to the employees of the three universities amounted to ₹ 2.70 crore. The details are given below:

Table 3.5: Details of excess payment of HRA

Name of the University	Excess HRA paid during	Amount paid (₹ in crore)
Calicut University	July 2008 to March 2010	1.07
Kannur University	April 2005 to February 2008	0.18
Mahatma Gandhi University	March 2006 to March 2010	1.45
Total		**2.70**

The matter was referred to the Government in May 2011. Their reply had not been received (October 2011).

3.4 Failure of oversight/governance

The Government has an obligation to improve the quality of life of the people for which it works towards fulfilment of certain goals in the area of health, education, development and upgradation of infrastructure and public service, etc. However, Audit noticed instances where the funds released by Government for creating public assets for the benefit of the community remained unutilised/blocked and/or proved unfruitful/unproductive due to indecisiveness, lack of administrative oversight and concerted action at various levels. A few such cases have been discussed below:

AGRICULTURE DEPARTMENT

3.4.1 Blocking of Funds

Release of ₹ 1.05 crore to the Kerala State Seed Development Authority for construction of five seed storage godowns and two seed processing units even before ensuring availability of land, resulted in blocking of funds during the period March 2003 to June 2009, besides incurring an expenditure of ₹ 1.19 crore towards rent for hiring godowns from April 2004 to March 2011.

The Director of Agriculture issued instructions (September 2002) for construction of five seed storage godowns in lands available with Krishi Bhavans/farms in the districts of Alappuzha, Kottayam, Ernakulam, Thrissur and Palakkad and two seed processing units in Alappuzha and Thrissur districts. These instructions were issued in connection with the 'Macro Management of Agriculture-Work Plan 2002-03'. The total estimated cost for the five seed storage godowns (₹ 75 lakh) and two processing units (₹ 30 lakh) was ₹ 1.05 crore. The task of implementation was entrusted to the Kerala State Seed Development Authority, Thrissur (KSSDA[52]). KSSDA requested (February 2003) the Director of Agriculture to issue necessary administrative sanction for construction of the godowns and also to deposit the entire amount in the bank account of KSSDA.

Availability of free sites was essential for smooth progress of work. Without ensuring availability of land, ₹ 1.05 crore was drawn and transferred to the bank account of KSSDA during the period March to May 2003. Though there

[52] A State autonomous body under the Agriculture Department

were repeated discussions within KSSDA between May 2003 and November 2008, they could not make any progress in the construction of godowns. The Government stated (July 2011) that the construction had not materialised due to procedural ineptitude and difficulty in finding suitable sites in the five districts. In November 2008, KSSDA decided to construct a Central Seed Godown-cum-Processing Centre at Alappuzha through the Kerala State Nirmithi Kendra[53] (KESNIK) instead of executing the work plan envisaged for construction of five seed godowns and two seed processing units. For this purpose, ₹ 89.16 lakh was given to KESNIK in five instalments during the period July 2009-March 2011. The construction of the godown was completed.

Non-construction of the godowns resulted in continued hiring of the godowns of Kerala State Warehousing Corporation[54] on rental basis since 2002-03 for storing seeds in these five districts[55] and the expenditure incurred towards rent during April 2004 to March 2011 was ₹ 1.19 crore.

Thus, release of funds to KSSDA without ensuring availability of suitable sites for construction of godowns resulted in blocking of funds with KSSDA during the period March 2003 to June 2009. Besides, there was expenditure of ₹ 1.19 crore towards rent for hiring of godowns.

FOREST AND WILDLIFE DEPARTMENT

3.4.2 Non-utilisation of funds

Due to lack of appropriate follow-up action by the Forest and Wildlife Department, ₹ three crore released for protecting an ecologically fragile mangrove eco-system remained unutilised for more than four years.

In order to protect and rehabilitate the ecologically fragile mangrove eco-system in the State, Government accorded (February 2006) sanction for the purchase of 50 hectares of mangrove land from private owners through negotiated purchase under the Land Acquisition Act. Based on a proposal from the Chief Conservator of Forests (Social Forestry), Government directed (March 2006) the District Collectors (DCs) of Kollam, Ernakulam, Thrissur, Kozhikode and Kannur to take immediate steps for land acquisition and the Divisional Forest Officers concerned to submit individual applications to the DCs. ₹ three crore was drawn (March 2007) for acquiring 49.8649 hectares[56] of mangrove land in three districts viz., Kollam, Thrissur and Kannur (Ernakulam and Kozhikode were excluded as the cost of acquisition was high) and ₹ one crore each was placed at the disposal of the DCs concerned. In accordance with Section 4(1) of the Ecologically Fragile Lands (EFL) Act, 2003, the Government has the power to declare, by notification in the Gazette,

[53] A State autonomous institution engaged in construction works using cost-effective technology

[54] Kerala State Warehousing Corporation is a statutory corporation having 50 *per cent* share capital by Central Warehousing Corporation and 50 *per cent* share capital by Government of Kerala.

[55] Alappuzha, Ernakulam, Kottayam, Palakkad and Thrissur

[56] Kollam : 18.7309 hectares, Thrissur : 5.1340 hectares, Kannur : 26.000 hectares

any land to be ecologically fragile land on the recommendation of the Advisory Committee. A request was sent by the District Collector to the Forest Department to submit a requisition with the connected documents such as (i) Government order sanctioning acquisition of land as per the Land Acquisition Act (ii) The alignment sketch showing the land to be acquired and iii) The copy of the *Adangal*[57] of the land to be acquired. However, the Forest Department did not submit any requisition notice along with details of land to be acquired to the concerned DCs. It was also noticed that the Forest Department did not verify along with the Revenue officials, the mangrove areas proposed for acquisition under the EFL Act, 2003. As such, the revenue authorities could not initiate land acquisition steps and utilize the funds. Further, it was decided in the meeting of the Chief Conservators of the Forest held on 18 March 2009 that land acquisition proceedings would only end up in the mangroves being cut down by the owners and it would be better to modify the scheme. In response to an enquiry by Audit, the department stated (July 2009) that the original proposal for which money was deposited was changed and it was decided to prepare an action plan for giving incentives to owners of mangroves to ensure their protection. However, it was seen that the department had again reverted to the original proposal of acquisition of mangroves and issued (June 2011) directions to the concerned departmental officers to take appropriate action. This indicates that the department did not have a clear strategy to address a serious ecological issue, which resulted in the entire amount of ₹ three crore remaining unutilised with the DCs.

It was also seen that though no funds were provided for the scheme in the Budget for 2006-07, ₹ three crore was obtained in the last batch (March 2007) of supplementary demands for grants and drawn in the same month. There was failure to utilise the funds. Consequently, the aim of protecting the ecologically fragile mangrove vegetation through acquisition of mangroves from private landowners could not be achieved, despite availability of funds. This also indicated the lackadaisical attitude of the department in utilising funds provided for environmental protection.

The matter was referred to the Government in June 2011. Their reply had not been received (October 2011).

HOME DEPARTMENT

3.4.3 Non-fulfilment of vision of Vigilance & Anti- Corruption Bureau

Effective functioning of the Vigilance & Anti - Corruption Bureau has the potential to yield substantial benefits to the Government. The constraints faced by the VACB at various stages of its operations have seriously impaired achievement of the objective of effectively combating corruption and misconduct by Government servants and public servants.

The Vigilance Division, under the control of the Director of Vigilance Investigation was formed by the Government of Kerala in 1964. It was renamed as Vigilance Department in 1975. The Vigilance & Anti-Corruption Bureau (VACB) was formed under the Vigilance Department in 1997. VACB

[57] Estimated value

is a specialized agency of the Government of Kerala, headed by a Director (in the rank of the Director General of Police), who is assisted by one Additional Director General of Police, one Inspector General of Police and one Superintendent of Police (Intelligence), along with technical and ministerial staff at the Headquarters. VACB is under the administrative control of the Vigilance Department headed by the Additional Chief Secretary to Government, Home and Vigilance. The field units of VACB are functioning in 14[58] districts located in four ranges[59]. Each unit functions under the Deputy Superintendent of Police and each range is headed by the Superintendent of Police. The annual budget of VACB is ₹ 31 crore (2010-11 Non-Plan). The number of Government servants and public servants falling under the jurisdiction of VACB is approximately 4.62 lakh. It has been laid down that VACB will not enquire into the conduct of officers of the Judicial Department, the Legislature Secretariat and the Kerala Public Service Commission except on the specific request of the departments.

The main objective of VACB is to effectively combat corruption and misconduct on the part of Government servants and public servants, particularly at the higher level. It derives the power to investigate the cases under the provisions of the Prevention of Corruption Act, 1988. The functioning of VACB is governed by the guidelines issued by the Government in May 1992 and April 1997.

The major activities of VACB include conducting of enquiries ordered by the Government, collecting information through surprise checks, confidential verifications, etc. and submitting the reports to the Government, with recommendations. VACB registers vigilance cases after enquiry, if necessary, and files charge-sheets before the Enquiry Commissioner and Special Judges Courts.

In audit, it was noticed that there were cases of delay in investigations as well as delay in taking action by the departments.

3.4.3.1 Delay in investigation of cases

The Government issued orders (April 1997) fixing the time limit as three to six months for enquiries/investigations of normal cases and 12 months for amassment of wealth cases. As against this, VACB took 20-24 months on an average in normal cases and 47-67 months for cases of amassment of wealth (2009). Audit scrutiny revealed that as of June 2011, 1,121 Confidential Verification/ Vigilance Enquiry/Vigilance Cases relating to the period up to March 2010 were pending with VACB. Audit also noticed that 775 cases were pending in the Vigilance Tribunal/ Enquiry Commission and Special Judges Courts. The details are given in **Table 3.6**.

[58] Alappuzha, Ernakulam, Idukki, Kannur, Kasaragode, Kollam, Kottayam. Kozhikode, Malappuram, Palakkad, Pathanamthitta, Thiruvananthapuram, Thrissur and Wayanad

[59] Ernakulam, Kottayam, Kozhikode and Thiruvananthapuram

Table 3.6: Pendency in disposal of investigating cases

Enquiry Agency	2000-2004 (More than 5 years)	2005-2010 (Less than 5 years)	Total
VACB			
1. Confidential Verification	2	134	
2. Vigilance Enquiry	46	500	
3. Vigilance Cases	42	397	
Total	**90**	**1031**	**1121**
Vigilance Tribunal Enquiry	23	65	
Special courts	121	566	
Total	**144**	**631**	**775**
Grand Total	**234**	**1662**	**1896**

Source: Details furnished by VACB

Audit analysis of the reasons for pendency revealed the following:-

Monitoring the work of VACB

- Para 4(2) of Chapter I of the VACB Manual stipulates that the work of the Bureau is to be closely monitored and over-seen by the Vigilance Department in the Secretariat under the Principal Secretary[60] to Government, Home & Vigilance. The Vigilance Department, however, stated (October 2011) that the pendency details of investigation cases of VACB were not available with them. The huge pendency in VACB as shown in **Table 3.6** indicates inadequate monitoring by the Vigilance Department.

Augmentation of Courts

- For speedy disposal of cases, VACB requested (August 2009) the Government to sanction four more Vigilance Courts to be set up in four districts. The Government did not agree to the proposal on the plea that it was reviewing the present manner of invoking the vigilance enquiries. Consequently the problem of huge pendency of cases in the existing courts remained unaddressed (August 2011).

Posting of personnel

- VACB draws personnel from the Police Department as per the Government Order issued in May 1992. The Government Order also stipulates that the selected personnel will normally work for three years. A scrutiny of posting of police personnel in the VACB revealed that there were frequent transfers of Investigating Officers. This would adversely affect the speedy completion of enquiries.

Training of Investigating officers

- A Government Order stipulated (April 1997) that regular training should be imparted to the Investigating Officers at the Central Bureau of Investigation Training Centre at Delhi in order to familiarise them with the latest techniques of investigation. As against the sanctioned strength of 143 Investigating Officers, the number of officers trained was 'nil' in three[61] years, one in two[62] years and a maximum of 20 in one[63] year. Audit observed that 24 officers who had undergone the training were transferred out of VACB before they completed the normal period of three years. Further, the allocation for training

[60] Now Additional Chief Secretary
[61] 2000-01, 2004-05 and 2009-10
[62] 2001-02 and 2008-09
[63] 2005-06

purposes during the last five years was a meagre 2.65 *per cent* of the total budget allocation. This indicates that the training was not given adequate priority with potential adverse implications of non-achievement of the objective of such training.

3.4.3.2 Delay in taking action by departments

After completion of investigation by VACB, the reports, along with recommendations are sent to the administrative departments concerned through the Vigilance Department. Further action thereon has to be taken by the Administrative Departments themselves.

Audit scrutiny (June 2011) of the records of the Director, VACB revealed that as of March 2010, Action Taken Reports (ATR) in respect of 2,589 persons were pending in various administrative departments on the reports issued by VACB. Of these, ATRs in respect of 218 persons were pending for more than 10 years and ATRs on 1,195 persons for more than five years.

The year-wise details are given in the following table:

Table 3.7: Details of pending Action Taken Reports

Year	Up to 1999	2000-2005	2006	2007	2008	2009	2010	Total
Departmental action pending against persons	218	1195	212	215	258	216	275	2589

Source: Details furnished by VACB

Periodical returns

- Para 294 under Chapter XIX of the Manual of Vigilance & Anti - Corruption Bureau stipulates that the Vigilance Department will closely pursue the vigilance enquiry reports referred to the administrative departments for taking action. Further, instructions have also been issued by the Government (January 2010) to all Principal Secretaries/Secretaries of the administrative departments concerned to finalise the action on vigilance proceedings within a period of one year. The Government order also stipulates that a periodical return be sent to the Vigilance Department in the Secretariat by the Principal Secretaries/Secretaries of the administrative departments concerned every month regarding the action taken on the vigilance enquiry reports. Monitoring the compliance of this objective would require maintenance of all the particulars in an electronic database. However, the department replied (October 2011) that the pendency details were not available. Hence there was no assurance that the upper time limit of one year fixed by the Government for finalising action on vigilance proceedings was being scrupulously followed.

Effective functioning of VACB has the potential to yield benefits to the Government equal to several times the budget (₹ 31 crore) of VACB. The constraints faced by VACB at various stages of its operation have seriously impaired the achievement of the objective of effectively combating corruption and misconduct on the part of Government servants and public servants. This has adverse implications of diluting the deterrent effect on erring officials and in turn diluting the effectiveness of VACB.

The above observations were referred to the Government in July 2011. Their reply had not been received (October 2011).

INFORMATION TECHNOLOGY DEPARTMENT

3.4.4 Acceptance of bank guarantees without adequate documentation

Acceptance of bank guarantees (₹ 2.62 crore) without taking possession of documents relating to their verification resulted in non-detection of their being fake.

Infopark[64] entrusted (August 2007) M/s Farooq Constructions, Alappuzha (contractor), the work of construction of a four-lane road from the Seaport-Airport road to Infopark for a contract value of ₹ 15.41 crore. An agreement in this regard was executed between Infopark and the contractor in September 2007. M/s KITCO Limited, was engaged as consultant for the project.

As provided in the agreement, the contractor submitted (September 2007) six bank guarantees from Indian Overseas Bank (IOB), Komalapuram Branch, Alappuzha, one for ₹ 0.77 crore towards security deposit and five for ₹ 1.85 crore for obtaining ₹ 1.54 crore as mobilization advance. These bank guarantees were forwarded through the consultant. While taking custody of the bank guarantees there was failure to ask for the original written communication sent to the bank for confirmation of the bonafides of the bank guarantees and the confirmation given in writing by the bank. These documents were necessary to establish the veracity of verification having been carried out when the consultant claimed to have done the verification exercise. It was incidentally observed that the consultant did not seek a written confirmation from the bank. Thus, taking custody of bank guarantees without the associated documents related to verification made the documentation incomplete.

The contractor was slow in executing the work and the contract was terminated (August 2008) at the risk and cost of the contractor. The contractor had executed works worth ₹ 2.88 crore and part payment of ₹ 2.47 crore was made to the contractor. From the part payment bills, the recovery of mobilisation advance effected was ₹ 0.42 crore. When Infopark decided to encash the bank guarantees to recover the balance amount of mobilization advance of ₹ 1.12 crore, it was found that the bank guarantees were fake. Even the amount of ₹ 0.77 crore obtained towards security deposit was backed by a forged bank guarantee.

The balance work was re-tendered for ₹ 19.28 crore which was ₹ 6.75 crore[65] more than the value quoted by the original contractor. As per the terms of the original agreement, the balance work, if re-tendered, was to be executed at the risk and cost of the original contractor.

The Government stated (August 2011) that they took effective measures when the fraud was noticed and instructions were given (September 2008) to the Chief Executive Officer of Infopark to file a criminal complaint against the contractor and to issue legal notices to the bank and KITCO. Infopark stated (September 2011) that they had filed criminal cases against the contractor for

[64] A society registered under Travancore Cochin Scientific and Charitable Societies Act, 1955, which is functioning under the Information Technology Department, Government of Kerala.

[65] ₹ 19.28 crore – (₹ 15.41 crore - ₹ 2.88 crore)

submitting forged guarantees and for dishonouring the cheques[66] (₹ one crore) submitted by them. Infopark also stated that they had filed a civil case before the Sub-Court of Ernakulam for recovering the additional expenditure incurred by Infopark in re-tendering the work and the suit was pending before the court. Thus, acceptance of bank guarantees (₹ 2.62 crore) without taking possession of documents relating to their verification resulted in non-detection of their being fake.

3.4.5 Inappropriate selection of site for Information Technology Park

Failure of the Government in selecting suitable land for development of an Information Technology Park based on environment considerations led to abandonment of the site after incurring an expenditure of ₹ 2.61 crore and subsequent relocation of the park to an alternative site.

Government accorded (June 2008) administrative sanction for setting up an Information Technology Park (ITP) in Purakkad village of Ambalapuzha Taluk, Alappuzha District. Out of the 100 acres[67] of land proposed for the project, 80.58 acres of land were transferred (August 2008) to the IT Department for assigning to the Kerala State Information Technology Infrastructure Limited (KSITIL), the developer of the project. Out of the 19.73 acres of adjacent land identified for the project, KSITIL acquired 12 acres by direct purchase using the funds provided by the Government. Acquisition of the balance land (7.73 acres[68]) was pending with the revenue authorities. The land (including the land purchased by KSITIL) earmarked for development of ITP consisted of paddy fields which were submerged in water up to a depth of 1.5 metre.

In September 2008, Government of India approved the State Government's proposal for development, operation and maintenance of a 'Special Economic Zone' (SEZ) for the Information Technology/Information Technology Enabled Services sector over an area of 13.44 hectares (33.20 acres), subject to the condition that the development of land would conform to the environmental requirements. Therefore, it was obligatory on the part of KSITIL to obtain environmental clearance before undertaking the developmental works.

Clearance for conversion of land was to be given by the Government based on the recommendations of the State Level Monitoring Committee (SLMC) and the Local Monitoring Committee[69] (LMC). Before getting formal clearance from the Government, KSITIL developed (May 2010) eight acres (included in 33.20 acres) of land by constructing a bund wall, dredging and filling of water-logged land by incurring an expenditure of ₹ 2.61 crore. The LMC meeting held on 21 June 2010 made a recommendation to the SLMC (in which the Chairman, Kerala State Bio-diversity Board was a member) for examining the clearance for land conversion. SLMC visited the site on 25 September 2010. Subsequently, the Chairman, Kerala State Bio-diversity Board requested (December 2010) the Government to consider alternative

[66] Subsequently submitted in lieu of fake bank guarantees
[67] 2.47 acres is equal to I hectare
[68] 5.34 acres of paddy field and 2.39 acres of dry land
[69] Committee constituted for preservation of wetlands

land for setting up the ITP as the land identified for the park had some environmental issues. Based on this, the Government ordered (December 2010) KSITIL to relocate the proposed ITP to an alternative site (20.40.88 hectares) having no environment problems in Purakkad village of Alappuzha district.

The Government stated (July 2011) that eight acres of the developed land could be used as a wind energy farm for producing wind energy, after conducting studies. Thus, failure of the Government in selecting suitable land for development of ITP based on environment considerations led to abandonment of the site after incurring an expenditure of ₹ 2.61 crore and subsequent relocation of the park to an alternative site (land for the new site has not been acquired so far).

PUBLIC WORKS DEPARTMENT

3.4.6 Kerala Road Fund Board - Deficiencies in the execution of Thiruvananthapuram City Road Improvement Project

The Thiruvananthapuram City Road Improvement Project remained incomplete even after seven years of award of a contract to the Thiruvananthapuram Road Development Company Limited and the Government had incurred arbitration liability of ₹ 125 crore (as against the estimated cost of ₹ 140 crore) towards cost escalation, idling of resources, delay in handing over land, etc.

The Kerala Road Fund Board (KRFB) awarded (March 2004) the Thiruvananthapuram City Road Improvement Project to the Thiruvananthapuram Road Development Company Limited (TRDCL), to be implemented as a public private partnership (PPP) project under the Build-Operate-Transfer (BOT) scheme. The estimated cost of the project was ₹ 140 crore. As per the negotiated bid, the payment was to be made to TRDCL as six-monthly annuities of ₹ 17.75 crore for 15 years starting from 16 November 2006. The project was to be completed by November 2006. The scope of the work included widening of 12 corridors of city roads for a total length of 42 km, geometric improvement, strengthening of road surfaces, improvement of junctions, construction of flyovers, etc. The project remained incomplete even after seven years of award of the work.

As per the agreement signed between KRFB and TRDCL in March 2004, KRFB was to hand over an encumbrance-free site to TRDCL between 15 April 2004 and 30 December 2004. Smooth execution of work was critically dependant on a free site. Given a tight schedule of 30 months for execution of the project, the problems relating to an encumbrance-free site such as litigations, procedural formalities and disputes should have been sorted out before award of the work. In recognition of the complexity of providing a clear site, provisions of the Public Works Department manual stipulate that the land for starting the work in time should be in possession for being handed over before the award of the work. Given the merit in this stipulation, KRFB should have adopted this procedure. This was not done.

In a Government order of 1985, it was clearly recognized that incorporation of an arbitration clause could seriously jeopardise the Government's interest due

to risk of misuse and consequent loss to the Government. In spite of this, the KRFB included the arbitration clause in the original agreement. Any delay in execution of a project has serious adverse implications by way of claims towards idle labour, idle machinery and cost escalation. These major risks were known at the time of calling for the bids. While there was a provision in the agreement for arbitration, the agreement executed in March 2004 did not provide for any formula regarding computation of claims towards idle labour and machinery, cost escalation and prescribe a verification mechanism for daily count of labour and machinery.

KRFB failed to provide encumbrance-free land as per the schedule mentioned in the contract and TRDCL stopped (November 2006) the work and demanded compensation (₹ 120 crore) towards cost escalation, extended stay, interest during construction etc. A preliminary assessment of the claims made by TRDCL was also done by M/s KITCO, a Government of India public sector undertaking and the value of compensation to be paid to TRDCL was assessed as ₹ 21 crore. While executing the resumption agreement (January 2008), it was agreed to resolve the above compensation claim through the arbitration procedure. TRDCL demanded an amount of ₹ 267.01 crore as compensation before the Arbitral Tribunal.

TRDCL's claim consisted of four parts. KRFB submitted before the Tribunal that all the claims made by TRDCL were not legally maintainable and factually sustainable and they were not liable to pay the amount claimed by TRDCL. It was prayed that the claims may be rejected. Later KRFB agreed to a non-speaking[70] award from the Tribunal and an amount of ₹ 125 crore was awarded in favour of TRDCL.

Having incorporated an arbitration clause in departure from the practice followed in the State, there was failure to clearly specify how compensation towards idle labour, idle machinery, cost escalation would be computed. This was thus a major lacuna in the original agreement. The monitoring mechanism was also flawed as they failed to maintain a day-wise log book of idle labour and machinery. These defects coupled with award of the project before ensuring all problems relating to providing of clear site to TRDCL which were not sorted out resulted in a massive contractual liability of ₹ 125 crore which was very close to the initial estimated cost of the project of ₹ 140 crore.

The Government replied (September 2011) that it had accepted the non-speaking award mainly to reduce the prolonged process involved in the arbitration and to avoid cost escalation that may arise because of this process. The reply is silent about the deficiencies in the original agreement and lapses relating to maintenance of log book during execution of the project.

As per the original agreement, the annuity payment was to start only after completion of the project. In contravention of this contract clause, KRFB made an upfront payment of ₹ 15 crore (in two instalments). A resumption agreement was also executed with TRDCL in January 2008 with a fresh annuity payment starting from January 2008, though the project had not been completed. The Government stated (September 2011) that measures taken by KRFB contributed to the speedy implementation of the project which

[70] An award made without giving reasons

eventually became beneficial to the public at large. The argument of Government is not acceptable as the decision of the Government was in violation of the original agreement and was clearly a favour to TRDCL.

3.4.7 Wasteful expenditure on repair works

The department carried out surface renewal works on a State highway immediately before the execution of heavy maintenance work under the Kerala State Transport Project, which resulted in wasteful expenditure of ₹ 73.19 lakh.

The Chief Engineer (CE), Kerala State Transport Project (KSTP) instructed (May 2008) the CE, Roads and Bridges, Public Works Department that only ordinary repairs should be carried out on the Palakkad-Meenakshipuram Road (36.30 km) as the road had been selected for immediate heavy maintenance work. However, the Executive Engineer (EE), Roads Division, Palakkad and the Assistant Executive Engineer (AEE), Roads Sub Division, Palakkad arranged to execute chipping carpet works[71] along 10 reaches[72] of the above road.

It was seen in audit that agreements for all these works were executed after receipt of the communication from the CE, KSTP and the works were undertaken during the period from 27 May to 24 December 2008. A total expenditure of ₹ 73.19 lakh was incurred on the repair works just before handing over the site to KSTP on 26 December 2008. Meanwhile, KSTP invited (August 2008) tenders and awarded (December 2008) a contract for heavy maintenance works. The work was commenced in December 2008 and completed in February 2011. Thus the execution of surface renewal works immediately before the execution of heavy maintenance works by KSTP on the road resulted in wasteful expenditure of ₹ 73.19 lakh.

The EE stated (November 2009) that due to heavy rain, the bituminous surface of the road had been damaged considerably and the maintenance work was carried out to make the road traffic-worthy. The reply is not acceptable as there were specific instructions by the CE, KSTP to undertake ordinary repair works only. Instead, the department carried out surface renewal (chipping carpet) works.

The matter was referred to the Government in July 2011. Their reply had not been received (October 2011).

3.4.8 Wasteful expenditure

Execution of a work without proper investigation and delay in rearranging the balance work rendered the foundation work of a bridge already executed at ₹ 52.39 lakh wasteful and also created additional financial commitment of ₹ 74.03 lakh due to change in design of the foundation.

Administrative sanction for the work 'construction of Muttakavu Bridge in Kollam-Ayoor Road' was issued in March 1996 for ₹ 1.05 crore and the work

[71] work intended to restore the road surface close to its original condition
[72] five reaches each having less than 1500m by EE and five reaches each having a length of 250m by AEE

was awarded (October 1998) to the Kerala State Construction Corporation Limited (KSCC) for an accepted probable amount of contract (APAC) of ₹ 1.89 crore. KSCC could not complete the work within the stipulated date (19 January 2000) of completion or within several extensions given up to 30 June 2003. KSCC completed only 10 *per cent* of the work and abandoned it after casting piles and carrying out a portion of pile driving work (cost of the work done: ₹ 52.39 lakh). Hence, the Superintending Engineer (SE), Roads and Bridges, South Circle, Thiruvananthapuram terminated (March 2004) the work at the risk and cost of the Corporation. However, the risk and cost liability of KSCC had not been assessed even after the lapse of seven years. The estimates were revised and administrative sanction for the revised estimates was issued (March 2009), after a delay of five years. The SE executed an agreement (October 2009) with another contractor for the balance work at an APAC of ₹ 3.55 crore.

The revised estimate was prepared based on the earlier design of the bridge of pre-cast pile foundation. While driving down of piles was attempted on resumption of the work, the pile heads were getting damaged due to the deterioration of the old pre-cast piles and the peculiar soil condition and the continuation of piling was found to be impossible. Hence, the design of the foundation had to be changed from pre-cast piles to bored *in situ* piles after detailed investigation. As a result, the estimated cost of the balance work increased to ₹ 4.29 crore. The execution of the balance work was in progress.

Thus the failure of the department to design a foundation structure suitable to the soil structure based on proper investigation and the inordinate delay in rearranging the balance work rendered the expenditure of ₹ 52.39 lakh on the work already executed wasteful and created additional commitment of ₹ 74.03[73] lakh at the estimated rates.

The matter was referred to Government in July 2011. Their reply had not been received (October 2011).

WATER RESOURCES/GENERAL ADMINISTRATION/HEALTH AND FAMILY WELFARE/ HIGHER EDUCATION/LEGISLATURE SECRETARIAT DEPARTMENTS

3.4.9 Avoidable payment of Power Factor penalty

Failure to install static capacitors/capacitors with sufficient rating by KWA and other departments resulted in Power Factor penalty of ₹ 6.61 crore.

As per the tariff orders issued by the Kerala State Electricity Regulatory Commission (KSERC), the following incentive and penalty are applicable to High Tension and Extra High Tension consumers for Power Factor (PF) improvement.

[73] ₹ 429.34 lakh – ₹ 355.31 lakh

Table 3.8: Power Factor penalty and incentive

Power Factor range	Penalty
Power Factor below 0.90	One *per cent* energy charge for every 0.01 fall in Power Factor from 0.90
Power Factor range	**Incentive**
Power Factor between 0.90 to 1.00	0.15 *per cent* of energy charges for each 0.01 unit increase in Power Factor from 0.90

Source: Tariff orders of Kerala State Electricity Regulatory Commission

KSERC recommended that static capacitors should be installed for power factor improvement. A detailed analysis of the electricity bills of the offices of the Kerala Water Authority (KWA) and other Government departments/ autonomous bodies revealed that the Kerala State Electricity Board (KSEB) charged PF penalty to the tune of ₹ 6.61 crore due to the PF being below 0.90 during the period from April 2005 to March 2011. Out of the total PF penalty of ₹ 6.61crore charged by KSEB, it was noticed that the major share of the penalty amounting to ₹ 4.35 crore pertained to KWA. At a belated stage, the energy management core team of KWA instructed (January 2010) the Executive Engineers of all Divisions to install capacitors within two months in all pumping stations to avoid penalties. The capacitors were, however, not installed (March 2011) and many of the Divisions continued to pay the PF penalty. Thus, the failure of the KWA and other Government departments/ autonomous bodies to install static capacitors/capacitors with sufficient rating resulted in PF penalty amounting to ₹ 6.61 crore till March 2011. The incentive which could have been received for PF between 0.90 and 1.00 could not also be availed of.

The matter was referred to Government in July 2011. Their reply had not been received (October 2011).